

**UNITED STATE DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION
CASE NO. 24-60408-CIV-DIMITROULEAS/HUNT**

NATALIE STEVENSON on behalf of
herself and others similarly situated,

Plaintiff,

vs.

FUNNY TIME, INC,
D/B/A GOLD CLUB POMPANO,
a Florida Profit Corporation, and
MICHAEL TOMKOVICH, in his
individual capacity,

Defendants.

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REPORT AND RECOMMENDATION

THIS CAUSE is before this Court on two related motions: Defendants' Motion to Dismiss, ECF No. 24, and Plaintiff's Motion to Stay, ECF No. 26. The Honorable William P. Dimitrouleas referred these Motions to the undersigned for a report and recommendation. ECF Nos. 25, 27; *see also* 28 U.S.C. § 636(b); S.D. Fla. Mag. R. 1. Having considered the Motions, the responses, the argument of counsel at an August 22, 2024 hearing, and being otherwise advised in the premises, the Court hereby recommends for the reasons outlined below that Defendants' Motion to Dismiss be DENIED, and that Plaintiff's Motion to Stay be GRANTED.

This action was brought by Plaintiff under the Fair Labor Standards Act, as amended, 29 U.S.C. § 201 et seq. Defendants initially moved to have the action dismissed based both on service issues and on an arbitration clause contained within the Parties' contract. Plaintiff then filed a Motion to Stay the case, agreeing that the case

should go to arbitration but arguing that a stay would be appropriate under the circumstances. See *Smith v. Spizzirri*, 601 U.S. 472 (2024) (holding that dismissal of action pending arbitration is improper where the claimant requests a stay of the action). Defendant responded, acknowledging the holding in *Spizzirri*. At the hearing, the Parties agreed that the appropriate step at this stage would be to stay the case and send the Parties to arbitration.

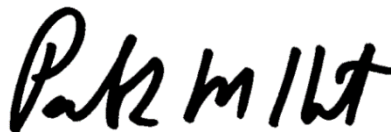
RECOMMENDATION

Accordingly, the undersigned respectfully RECOMMENDS that:

Plaintiff's Motion to Stay, ECF No. 26, should be GRANTED. This matter should be stayed, and the Parties should be required to arbitrate in accordance with the Parties' contract. Defendants' Motion to Dismiss, ECF No. 24, should be DENIED.

Within seven (7) days after being served with a copy of this Report and Recommendation, any Party may serve and file written objections to any of the above findings and recommendations as provided by the Local Rules for this district. 28 U.S.C. §636(b)(1); S.D. Fla. Mag. R. 4(b). The Parties are hereby notified that a failure to timely object waives the right to challenge on appeal the district court's order based on unobjected-to factual and legal conclusions contained in this Report and Recommendation. 11th Cir. R. 3-1 (2016); see *Thomas v. Arn*, 474 U.S. 140 (1985).

DONE and SUBMITTED at Fort Lauderdale, Florida, this 22nd day of August 2024.



PATRICK M. HUNT
UNITED STATES MAGISTRATE JUDGE

Copies furnished to:
The Honorable William P. Dimitrouleas
All counsel of record